IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Appeal Lodging No 56l of 2004
in
Writ Petition No.255 of 200l
M/s Swan Mills Ltd... appellants
vs
Shri Sakharam Dhondu Panchal and anr..respondents
with
Appeal Lodging No. 562 of 2004
in
Writ Petition No.256 of 2000
M/s Swan Mills Ltd.. appellants
vs
Shri Sakharam Dhondu Panchal and anr.. respondents
Mr. V.P.Vaidya for appellants
Mr. Sanjay Udeshi for respondents

CORAM: A.P.SHAH & S.J.VAZIFDAR JJ.

Dated l7.l.2005

P.C:
Heard advocate for the appellants.

l. These appeals are directed against the common order passed by the learned single Judge in three writ petitions - two filed by the employer and one by the workman. By the impugned order the learned single Judge has dismissed all the three writ petitions. Being aggrieved the employer has come in appeal.

2. The question involved is of interpretation of the order passed by the Industrial court dated l2.l0.l995 especially paras 26 and 27 of the said order. As a result of the said order, dismissal of

the workman was set aside. Ordinarily the workman would have been entitled for reinstatement with backwages.However, in view of the closure of the department with effect from 25.l.l990 it was not possible to order reinstatement. Consequently the Industrial Court directed that the benefits which the workman is entitled to consequent upon the order of dismissal being set aside, should be calculated in terms of the MOU dated 5.2.l99l to the extent that they could be granted.

3. The learned single Judge on consideration of clauses 5 and 7 of the MOU held as under:

> "The workman in the instant case, though the order of the Industrial court is of l2.l0.l995 and though the closure of the department on 20.l.l990,acting in terms of the MOU sent letter of resignation. A letter of resignation could only have been sent by a person in service and not by a person who could not be reinstated in service. The order of the Industrial Court was by way of incorporating the monetary benefits in terms of the MOU in the Award. In other words, benefits which the workman was entitled to ought to be computed in

terms of the MOU and there was no requirement that to get the benefits the workman had to resign. By way of abundant caution it appears that the workman had sent his letter of resignation which was accepted by the company as can be seen from their pleadings. The argument advanced on behalf of the petitioners that the MOU does not provide for wages other than for the period l.l.l989 to 27.l.l989 is belied by the language of clause 7 which speaks of earned wages even before 26.l.l989. What the Industrial Court meant was that the workman would be entitled to wages consequent upon the order of dismissal being set aside which would include the period l.l.l989 to 27.l.l989.

Having considered the judgment and the MOU the contention as advanced on behalf of the petitioner employer that there was no direction for payment of back wages and that the MOU did not provide for back wages will have to be rejected. The court under section 33(c)(2) has understood the order as meaning awarding of back wages. The order and MOU read together clearly leads to that

conclusion. It is probably the only conclusion which could be drawn."

4. We do not find any error apparent on the face of record in the order of the labour court and confirmed by the learned single Judge. The view taken by the courts below is a possible view and we do not see any ground to interfere with the concurrent findings recorded by the courts below.

Appeals are accordingly dismissed.